

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DARLENE Y. GUYETTE,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Case No. C07-5581BHS

REPORT AND
RECOMMENDATION

Noted for April 4, 2008

This matter has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrate Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter is before the court on Defendant's motion to dismiss (Doc. 6). After carefully reviewing the motion, Plaintiff's opposition to the motion (Doc. 8), and the balance of the record, the undersigned recommends that the Court grant the motion.

INTRODUCTION

On October 22, 2007, following the Administration's Appeals Council's denial of her Request for Review, Plaintiff filed the Complaint in this matter alleging her request to receive social security benefits was erroneously denied by the Social Security Administration. On January 1, 2007, before filing an Answer to the Complaint, Defendant moved to dismiss the Complaint based on the argument that the Administration has not issued a "final decision," and therefore, defendant argues the court does not maintain jurisdiction over the matter. Plaintiff opposes the motion to dismiss. The issue before the court

1 is whether or not Plaintiff properly exhausted his administrative remedies prior to filing the Complaint.
 2 After reviewing the arguments and procedural history the undersigned finds Plaintiff failed to exhaust her
 3 administrative remedies and thus, Defendant's motion to dismiss for lack of jurisdiction should be
 4 granted.

5 DISCUSSION

6 The Social Security Act limits judicial review of the Commissioner's decisions to any
 7 "final decision of the Commissioner of Social Security made after a hearing." 42 U.S.C. § 405(g); *see*
 8 *also Evans v. Chater*, 110 F.3d 1480, 1482 (9th Cir. 1997). The Supreme Court has recognized, "[t]his
 9 provision clearly limits judicial review to a particular type of agency action," a final decision of
 10 the Commissioner made after a hearing. *Califano v. Sanders*, 430 U.S. 99, 108 (1977). There is an
 11 exception to the above rule allowing judicial review only after a hearing. This Court has jurisdiction to
 12 review the Commissioner's finding of res judicata if Plaintiff has alleged a colorable constitutional claim.
 13 *See Sanders*, 430 U.S. at 109; *Evans*, 110 F.3d at 1482. A colorable constitutional claim includes a due
 14 process violation that implicates a due process right to a meaningful opportunity to be heard or to seek
 15 reconsideration of an adverse benefits determination. *See Udd v. Massanari*, 245 F.3d 1096, 1099 (9th
 16 Cir. 2001); *Evans*, 110 F.3d at 1483.

17 Here, Plaintiff failed to file a timely request for review of the ALJ's September 29, 2006,
 18 favorable decision. Plaintiff's underlying application for social security income benefits was filed with
 19 the administration on September 23, 2004. The assigned Administrative Law Judge ("ALJ") reviewed the
 20 matter, and without holding a hearing, issued a favorable decision finding Plaintiff disabled.¹ By
 21 regulation, Plaintiff was given sixty (60) days to file a Request for Review with the Administrations
 22 Appeals Council if she wished to challenge the ALJ's decision. 20 C.F.R. § 416.1468. While Plaintiff
 23 filed a request with the administration to re-open a prior application on October 16, 2006, which was
 24 denied on December 5, 2006, Plaintiff did not file a request for review until February 5, 2007, well after
 25 the sixty (60) day time period had expired. Rather than deny Plaintiff's late Request for Review, the
 26 Appeal's Council asked Plaintiff to provide within thirty (30) days an explanation, "good cause," for the
 27

28 ¹The ALJ is not required to conduct an oral hearing if the evidence in the hearing record supports a favorable decision. 20
 C.F.R. § 416.1448.

1 late filing. Plaintiff did not respond to the Appeal's Council's request. On August 17, 2007, the Appeals
2 Council found no good cause existed and issued its decision denying Plaintiff's Request for Review.
3 Based on this undisputed history of the case, Plaintiff failed to properly pursue her administrative
4 remedies and failed to obtain any final decision which could be reviewed by this court.

5 Plaintiff argues the court should apply equitable tolling in this case and that to deny her the ability
6 to challenge the ALJ's hearing decision, when an oral hearing was not conducted, would deny her due
7 process protected by the Fifth Amendment of the U.S. Constitution. The court is unpersuaded by
8 Plaintiff's arguments.

9 As noted above and explained in Defendant's motion, 42 U.S.C. § 405(g) authorizes judicial
10 review only after a "final decision" by the administration. The term "final decision" is undefined in the
11 Act, and "its meaning is left to the [Commissioner] to flesh out by regulation." Weinberger v. Salfi, 422
12 U.S. 749, 767 (1975). The regulations, in turn, provide that a claimant must complete a four-step
13 administrative review process to obtain a judicially reviewable final decision. 20 C.F.R. § 416.1400(a). If
14 the claimant does not timely pursue administrative appeal rights, the administrative determination or
15 decision becomes binding. 20 C.F.R. §§ 416.1405, 416.1421, 416.1455, 416.1481. The Supreme Court
16 "long has acknowledged the general rule that parties exhaust prescribed administrative remedies before
17 seeking relief from the federal courts." McCarthy v. Madigan, 503 U.S. 140, 144-45 (1992). As the Court
18 observed, "[e]xhaustion is required because it serves the twin purposes of protecting administrative
19 agency authority and promoting judicial efficiency." Id. at 145. The exhaustion doctrine is "grounded in
20 Congress' delegation of authority to coordinate branches of Government" and "recognizes that agencies,
21 not the courts, ought to have primary responsibility for the programs that Congress has charged them to
22 administer." Id. The exhaustion requirement also reflects the idea that "an agency ought to have an
23 opportunity to correct its own mistakes with respect to the programs it administers before it is hailed into
24 federal court." Id. Providing the agency with the opportunity to correct its own errors may eliminate the
25 need for judicial involvement altogether; if it does not moot the case entirely, it at least avoids piecemeal
26 appeals and may produce a useful record for subsequent judicial consideration. Id.

27 Here, it is undisputed Plaintiff failed to file a timely Request for Review following the ALJ's fully
28 favorable decision. Plaintiff argues she was entitled to a hearing to argue the issue of whether or not her

1 earlier application should be reopened by the administration, but as noted above the ALJ properly made
 2 his fully favorable decision without an oral hearing. 20 C.F.R. § 416.1448. The court also notes
 3 Plaintiff's Complaint characterizes the ALJ's decision as a "fully favorable" decision, but now argues in
 4 opposition to the motion to dismiss that it was not favorable on every issue, namely the issue of reopening
 5 an earlier application for benefits. However, Plaintiff's argument is without merit, as the court does not
 6 have subject matter jurisdiction to review an administrative law judge's (ALJ) refusal to reopen a previous
 7 claim for benefits. Califano v. Sanders, 430 U.S. 99, 107-08 (1977) (holding that 42 U.S.C. § 405(g)
 8 "cannot be read to authorize judicial review of alleged abuses of agency discretion in refusing to reopen
 9 claims for social security benefits"), and that issue is distinguished from whether or not a timely Request
 10 for Review was made, which is the sole issue before the court.

11 Finally, Plaintiff argues "Defendant's actions equitably tolled the statute of limitations." In
 12 support of this argument, Plaintiff re-argues the issue of whether or not the ALJ abused his discretion or
 13 denied Plaintiff her right to a hearing. As discussed above, the ALJ properly issued his decision without
 14 conducting a oral hearing, Plaintiff was provided sufficient notice of his decision, and Plaintiff was given
 15 significant time to file a Request for Review with the Appeals Council and to explain why the Request for
 16 Review, when filed, was late. Plaintiff did not respond to the latter opportunity. Accordingly, the
 17 undersigned finds not basis to "equitably toll the statute of limitations" in this matter.

18 CONCLUSION

19 Based on the foregoing, the Court should find that it lacks jurisdiction over this matter and
 20 therefore should GRANT defendant's motion to dismiss.

21 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
 22 parties shall have ten (10) days from service of this Report to file written objections. *See also*
 23 Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
 24 Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is
 25 directed to set the matter for consideration on **April 4, 2008**, as noted in the caption.

26 DATED this 10th day of March, 2008.

27 /s/ J. Kelley Arnold
 28 J. Kelley Arnold
 U.S. Magistrate Judge